

ESTTA Tracking number: **ESTTA584099**

Filing date: **01/27/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mediware Information Systems, Inc.
Granted to Date of previous extension	01/26/2014
Address	11711 West 79th Street Lenexa, KS 66214 UNITED STATES
Attorney information	Wendi E. Sloane Barack Ferrazzano Kirschbaum & Nagelberg LLP 200 West Madison Street, Ste. 3900 Chicago, IL 60606 UNITED STATES trademarks@bfkn.com Phone:3129843100

Applicant Information

Application No	85939475	Publication date	07/30/2013
Opposition Filing Date	01/27/2014	Opposition Period Ends	01/26/2014
Applicant	Citrix Systems, Inc. 851 West Cypress Creek Road Fort Lauderdale, FL 33309 GERMANY		

Goods/Services Affected by Opposition


Class 009. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: computer software and computer software applications for use on electronic devices and over global, mobile, and local computer networks to access, distribute, deliver, and manage computer applications


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2426523	Application Date	09/20/1999
Registration Date	02/06/2001	Foreign Priority Date	NONE
Word Mark	WORX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1995/12/12 First Use In Commerce: 1996/09/16 COMPUTER SOFTWARE, NAMELY, FULLY FEATURED PHARMACY INFORMATION SYSTEM SOFTWARE PROVIDING A FULL-FEATURED DRUG THERAPY INFORMATION SYSTEM AND FOR MANAGING INFORMATION SPECIFIC TO PHARMACEUTICAL CARE

U.S. Registration No.	2112695	Application Date	06/27/1995
Registration Date	11/11/1997	Foreign Priority Date	NONE
Word Mark	WORX		
Design Mark			
Description of Mark	The mark consists of the typed letters "W", "O", "R" and "X", with the "R" and "X" composing the well-known pharmacy symbol.		
Goods/Services	Class 009. First use: First Use: 1995/12/04 First Use In Commerce: 1996/09/16 pharmacy information systems software, and related user manuals, sold as a unit		

Related Proceedings	Oppositions against Application Serial Nos. 85/939,479 (WORXDESKTOP), 85/939,454 (WORXMAIL), and 85/939,406 (WORX HOME)
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Attachments	75803651#TMSN.gif(bytes) 74695696#TMSN.gif(bytes) WORXSTORE Notice of Opposition.pdf(1066684 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Wendi E. Sloane/
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Name	Wendi E. Sloane
Date	01/27/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	x
	:
MEDIWARE INFORMATION SYSTEMS,	:
INC.,	:
	: In the matter of:
Opposer,	: Application Serial No. 85/939,475
	: For the mark:
	: WORXSTORE
v.	: Published in the <i>Official Gazette</i>
	: On July 30, 2013
	:
	:
CITRIX SYSTEMS, INC.,	:
	:
Applicant.	:
	:
	:
	x

NOTICE OF OPPOSITION

Opposer, Mediware Information Systems, Inc. ("Opposer"), a New York corporation, with the address of 11711 West 79th Street, Lenexa, KS 66214, believes that it will be damaged by the registration of the mark WORXSTORE ("Applicant's Mark"), as shown in Application Serial No. 85/939,475, filed on May 22, 2013 by Citrix Systems, Inc. ("Applicant"), for registration in connection with "computer software and computer software applications for use on electronic devices and over global, mobile, and local computer networks to access, distribute, deliver, and manage computer applications" in International Class 9, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer, a New York corporation, provides specialized healthcare solutions including developing and delivering innovative health-related software, and has advertised, promoted, distributed and sold, since at least as early as 1996, a wide variety of such goods under its unique trademark WORX in the United States.

2. Opposer owns several federal trademark registrations in the United States for its unique WORX trademark, covering both its stylized logo (the “WORX Logo Design”) as well as the literal element in standard characters (collectively, the “WORX Marks”). These registrations include:

MARK	REG. NO.	GOODS/SERVICES	CLASS(ES)
WORX	2,426,523	computer software, namely, fully featured pharmacy information system software providing a full-featured drug therapy information system and for managing information specific to pharmaceutical care	9
WORx	2,112,695	pharmacy information systems software, and related user manuals, sold as a unit	9

3. These registrations are valid, subsisting, and incontestable. Together, these marks protect Opposer’s specialized health-related software. Copies of these registrations from the U.S. Patent and Trademark Office (“PTO”) database are attached herewith, collectively marked as **Exhibit A**. Certified copies of these properties will be made of record during Opposer’s testimony period. Opposer currently distributes its products in commerce under the WORX Marks, both within the United States as well as internationally.

4. Long prior to the filing date of the application opposed herein, Opposer used the WORX Marks for the goods covered by the registrations referred to above. Pharmacy and other health-related software sold under the WORX Marks has been extremely successful

throughout the country and internationally, and has come to be associated by consumers as emanating exclusively from Opposer.

5. Opposer's WORX Marks are strong and distinctive, and are protectable without proof of secondary meaning. Also, by virtue of Opposer's longstanding use, the WORX Marks are accorded protection not only in connection with the precise goods identified in Opposer's registrations, but also in connection with products which are related to or which are in the likely zone of natural expansion of the goods identified in Opposer's registrations.

6. The WORX Marks have achieved extensive consumer recognition by virtue of Opposer's continuous use of the marks for almost two decades with the registered goods and its own advertising and publicity. Opposer also features the WORX Marks on its own website <http://www.mediware.com/medication-management/worx>, representative pages of which are collected at **Exhibit B**.

7. Opposer's goods have been sold and marketed under the WORX Marks, both in the United States and internationally, and have become exclusively associated with Opposer. As a result of this extensive use, Opposer has acquired an eminent reputation and valuable good will in the WORX Marks throughout the United States.

8. On May 22, 2013, Applicant filed its application to register "WORXSTORE" for "computer software and computer software applications for use on electronic devices and over global, mobile, and local computer networks to access, distribute, deliver, and manage computer applications" in International Class 9. Applicant filed its application under the intent-to-use basis, 15 U.S.C. § 1051(b).

9. Applicant's Mark so closely resembles Opposer's WORX Marks in appearance, sound and in the overall commercial impression it imparts on consumers that it is

likely to cause confusion, mistake or deception among the buying public as to source if registered with the goods identified in the application opposed herein, in violation of 15 U.S.C. § 1052(d).

10. Foremost, the visual appearance of Applicant's Mark is confusingly similar in a number of respects to the WORX Marks. The dominant "Worx" component is identical between the Applicant's Mark and Opposer's WORX trademark, and is similarly placed at the beginning of each mark. Inclusion of the "Store" component does not obviate the likelihood of confusion since consumers generally focus their attention on the first word or portion of any trademark. The "Store" portion is also not particularly distinctive in connection with Applicant's recited goods, and would likely have been disclaimed if "WORXSTORE" was not filed as a compound word mark; it is therefore not sufficient to eliminate confusion. Moreover, having filed its application with a standard character claim, Applicant's Mark does not include any design element or appear in any uniquely distinct stylization that could otherwise visually distinguish it from Opposer's WORX Marks. Applicant's Mark is therefore visually similar to Opposer's WORX Marks.

11. Applicant's Mark is also similar phonetically to the WORX Marks. The trademarks sound practically the same, and are in fact acoustically identical in regard to the dominant "Worx" components.

12. Moreover, Applicant's Mark is similar in overall commercial impression to the WORX Marks. More precisely, each invokes the connotation of something functional and dependable. The difference from Applicant's inclusion of the "Store" suffix is also insufficient to preclude likely confusion since this element appears descriptive for certain aspects of Applicant's recited goods.

13. Applicant has applied to register its mark with computer software and applications for use on electronic devices and over networks for accessing, distributing, delivering and managing computer applications—goods that may be used in the pharmaceutical and other health-related sectors and which may even encompass Opposer’s software, thereby heightening the likelihood of confusion. Applicant’s registration of a mark highly similar to Opposer’s WORX Marks is likely to give rise to the mistaken belief among consumers that Applicant’s software is that of Opposer, emanate from the same source, and/or that Applicant’s goods are sponsored by, approved by, connected with or otherwise affiliated with those of Opposer.

14. Applicant’s and Opposer’s goods are also likely to be encountered by overlapping purchasers, possibly in the same or similar channels of distribution. As the senior user of a “Worx”-based mark with Class 9 software generally and owner of a several corresponding registrations, Opposer is entitled to protection against registration of a confusingly similar mark not only with identical content software, but also with compatible software making it possible to, *e.g.*, remotely access Opposer’s WORX suite. It is entirely reasonable for consumers in the pharmaceutical and other health sectors seeing Applicant’s electronic device software for accessing, distributing, delivering and managing computer applications sold under “WORXSTORE” to assume that such products emanate from Opposer, or are somehow associated or affiliated with or sponsored by Opposer, believing that Opposer has expanded the functionality of its WORX software. This is particularly true where, as here, Applicant’s broadly-defined software is not limited to any one industry. Finally, Opposer’s and Applicant’s products under the respective marks could even be sold at similar price points, potentially heightening the risk of confusion.

15. Applicant's Mark so closely resembles the WORX Marks that it is likely to cause confusion, mistake or deception within the meaning of Section 2(d) of the Lanham Act.

16. Opposer has not authorized or consented to Applicant's use or registration of Applicant's Mark in the United States.

17. Accordingly, registration of Applicant's Mark in connection with the goods specified in its application will likely cause consumers to be confused, mistaken or deceived as to the source, origin or sponsorship of Applicant's goods, to believe that Applicant's goods emanate from Opposer, to believe that Applicant is in some way related to Opposer, and/or to believe that Applicant's goods marketed under the opposed mark are marketed with the consent, permission or authorization of Opposer.

18. If Applicant is permitted to register Applicant's Mark for the goods as set forth in the application herein opposed, it is likely that the relevant public will be confused as to source, resulting in damage and injury to Opposer.

19. Furthermore, any defect, objection or fault found with Applicant's goods would necessarily reflect on and seriously injure the reputation that Opposer has established under the WORX Marks and the goods sold and services provided thereunder.

20. If Applicant were to be granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark for Applicant's goods. Such registration would be a source of damage and injury to Opposer, as set forth herein.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that registration of the mark WORXSTORE, Application Serial No. 85/939,475 for the products specified in such application, be refused and that no registration should issue thereon to Applicant.

945902.v2

Certificate of Service

The undersigned, an attorney, hereby certifies that on January 27, 2014, she served a copy of this Notice of Opposition upon the Applicant Citrix Systems, Inc.'s attorney by first class mail to:

Deborah J. Peckham, Esq.
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110-1624

/Wendi E. Sloane/

Wendi E. Sloane

EXHIBIT A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,426,523

United States Patent and Trademark Office

Registered Feb. 6, 2001

**TRADEMARK
PRINCIPAL REGISTER**

WORX

MEDIWARE INFORMATION SYSTEMS, INC. (NEW
YORK CORPORATION)
1121 OLD WALT WHITMAN ROAD
MELVILLE, NY 117473005

FOR: COMPUTER SOFTWARE, NAMELY, FULLY
FEATURED PHARMACY INFORMATION SYSTEM
SOFTWARE PROVIDING A FULL-FEATURED DRUG
THERAPY INFORMATION SYSTEM AND FOR MAN-
AGING INFORMATION SPECIFIC TO PHARMA-

CEUTICAL CARE, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).

FIRST USE 12-12-1995; IN COMMERCE
9-16-1996.

OWNER OF U.S. REG. NO. 2,112,695.

SER. NO. 75-803,651, FILED 9-20-1999.

REID WILSON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,112,695

United States Patent and Trademark Office

Registered Nov. 11, 1997

**TRADEMARK
PRINCIPAL REGISTER**

WORx

MEDIWARE INFORMATION SYSTEMS, INC.
(NEW YORK CORPORATION)
280 TECHNOLOGY CIRCLE
SCOTTS VALLEY, CA 95066

FOR: PHARMACY INFORMATION SYSTEMS
SOFTWARE, AND RELATED USER MANU-
ALS, SOLD AS A UNIT, IN CLASS 9 (U.S. CLS.
21, 23, 26, 36 AND 38).

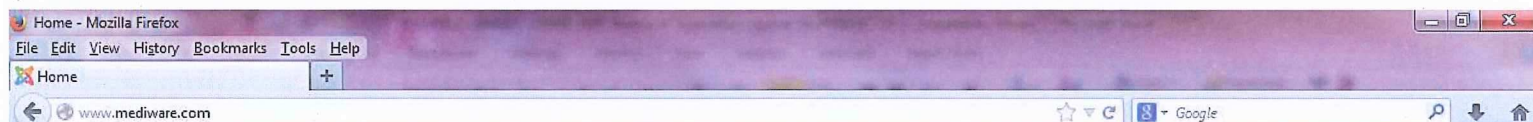
FIRST USE 12-4-1995; IN COMMERCE
9-16-1996.

THE MARK CONSISTS OF THE TYPED LET-
TERS "W", "O", "R" AND "X", WITH THE "R"
AND "X" COMPOSING THE WELL-KNOWN
PHARMACY SYMBOL.

SN 74-695,696, FILED 6-27-1995.

DAVID H. STINE, EXAMINING ATTORNEY

EXHIBIT B



ABOUT US SUPPORT CAREERS CONTACT



BLOOD



CELLULAR THERAPY



HOME CARE



MEDICATION MANAGEMENT



PERFORMANCE MANAGEMENT



REHABILITATION



RESPIRATORY

PROVIDING SOFTWARE SOLUTIONS FOR COMPLEX HEALTHCARE ENVIRONMENTS

Thousands of healthcare professionals rely on Mediware every day to drive down costs...adapt to ever-changing regulations...and manage patient information across the care continuum. Our 400 subject matter experts understand both your business considerations and your burning desire to deliver exceptional care.

Clinicians turn to Mediware to streamline workflow and documentation. Healthcare managers look to us to connect data, simplify compliance and deliver new insights into their business. And healthcare executives choose Mediware to pave the way into the highly integrated future of healthcare.



WORx Medication Management Software

Home // Medication Management // WORx

Master the WORx[®] pharmacy suite

As Mediware's most robust pharmacy management suite, WORx is designed for large and complex healthcare environments.

More than 180 major healthcare institutions, including 13 state behavioral health networks across the U.S. rely on the WORx Suite to streamline workflow, automate inventory controls and provide accurate and efficient medication management for the general safety of their patients.

Efficient Pharmacy and Inventory Management

Use a closed loop system to manage your operations.

- Longitudinal patient histories
- Robust inventory management
- Multi-facility support
- Pharmacist-to-nurse communication
- Inpatient, ambulatory and special care
- Rich clinical decision support with real-time alerts
- Online adjudication
- Remote storage and distribution support

Medication Administration Module - MediMAR[®]

Increase safety and decrease risk at the point of care.

- Take advantage of bedside barcode scanning
- Provide nurses with powerful automated safety checks at the bedside
- Help ensure the right drugs are given to the right patient in the right way

FIND OUT MORE ...

REQUEST INFO

Talk to a Medication Management Specialist about WORx. Fill out the form to start the conversation.

First Name

Last Name

Facility Name

Title

Email

Phone Number

☐ I want to schedule a demo

☐ I want information on pricing

Submit